



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 8421718

Date: NOV. 25, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a martial arts apparel company founder and chief executive officer (CEO), seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for the EB-2 classification as a member of the professions holding an advanced degree and for a national interest waiver under the *Dhanasar* framework.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will remand the matter to the Director for further action and consideration.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

---

<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

### A. Member of the Professions Holding an Advanced Degree

In order to show an individual is a professional holding an advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, the Petitioner may present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B). The Director's decision did not analyze the Petitioner's “Bachelor's Degree in Administration” (2006) from [REDACTED] University of [REDACTED] or his subsequent experience in his specialty to make a finding as to whether he qualifies as a member of the professions holding an advanced degree.

### B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

#### 1. Substantial Merit and National Importance of the Proposed Endeavor

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that as CEO of [REDACTED] his proposed endeavor involves “developing and commercializing his own proprietary and unique brand of Jiu-Jitsu apparel through his brand [REDACTED]” He asserted that he is “working on developing a Jiu-Jitsu apparel manufacturing facility in the United States, which will not

---

<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

only increase the cost effectiveness of the company's operations and brand exposure, but will certainly bring significant economic benefits to the United States through job creation and significant tax revenues." In addition, the Petitioner stated that he plans to participate in "government-sponsored social programs focused on youth sports education, anti-bullying, women's self-defense, prevention of domestic violence, suicide prevention, overall health and wellness, and other programs for the most vulnerable members of the community through the teachings of Jiu-Jitsu."

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. The Director's decision concluded that the Petitioner has met *Dhanasar*'s first prong, but did not identify the evidence upon which this determination was based.<sup>4</sup>

## 2. Well Positioned to Advance the Proposed Endeavor

As evidence for *Dhanasar*'s second prong, the Petitioner offered documentation relating to his company, including its articles of incorporation, bylaws, stock certificates, California corporate registration, business license, tax certificate, U.S. corporation income tax returns, commercial lease agreement, facility photographs, and product information. He also provided recommendation letters discussing his entrepreneurial success, the quality of his apparel, and interest in his company's products. In addition, the Petitioner submitted certificates of achievement and recognition, media coverage relating to his company, promotional material for his products, letters from potential investors, distribution agreements, and a detailed business plan. While the Director's decision mentioned the recommendation letters, it did not include a proper analysis of the content of the letters or a sufficient discussion of the other evidence presented under this prong of the *Dhanasar* framework.<sup>5</sup>

## 3. Balancing Factors to Determine Waiver's Benefit to the United States

With respect to prong three of the *Dhanasar* precedent decision, the Petitioner asserted that he is eligible for a waiver due to his entrepreneurial skills and knowledge, business experience, impact on the field of Jiu-Jitsu, critical role as company CEO, innovative products, and the inapplicability of labor certification. The Director's decision listed five factors that USCIS may consider in determining

---

<sup>4</sup> Although the Petitioner's statements reflect his intention to expand his apparel company and to serve his community, the Director should consider whether the Petitioner has presented sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. In the instant case, the Director should consider whether the record shows that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company and its operations to impact the martial arts apparel industry or sport of Jiu-Jitsu more broadly at a level commensurate with national importance. Furthermore, the Director should consider whether the record demonstrates that the specific endeavor the Petitioner proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation.

<sup>5</sup> The Director's decision also incorrectly stated that "[t]he evidence does not show potential customers and investors have any interest in the beneficiary and her work specifically." The record, however, includes letters from the Petitioner's business partners, customers, and potential investors that render the Director's finding erroneous. The Director's decision also incorrectly refers to the Petitioner as a female in the aforementioned statement and at other times in the decision. In addition to analyzing the specific content of the recommendation letters, the Director should consider all of the evidence the Petitioner has provided under *Dhanasar*'s second prong.

whether, on balance, it would be beneficial to the United States to waive the requirement of a job offer and thus of a labor certification, but did not evaluate the Petitioner's arguments and evidence as they relate to these factors. Instead, the Director's decision improperly concluded that because the Petitioner had not satisfied the second prong of the *Dhanasar* framework, he therefore did not meet prong three.<sup>6</sup> Without a proper evaluation of the evidence in accordance with the factors identified in the *Dhanasar* precedent decision, the Director's determination regarding prong three was in error.

### III. CONCLUSION

We are therefore remanding the petition for the Director to consider whether the Petitioner has satisfied the eligibility requirements for classification as member of the professions holding an advanced degree. In addition, the Director should properly apply all three prongs of the *Dhanasar* analytical framework to make a determination as to whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision which, if adverse, shall be certified to us for review.

---

<sup>6</sup> The Director's decision stated: "Because [the Petitioner] did not demonstrate how he is well position [*sic*] to advance the endeavor or that his contribution equate [*sic*] to a record of successes, the balance does not favor waiving the requirement of a job offer."